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John Milton and the Epochs of International Law

Christopher N. Warren*

Abstract

For the historian of international law William Grewe in his controversial opus, The Epochs of International Law, *it was the English writer John Milton who offered the death blow to an entire epoch, one founded on the principle that discovery brought legal title in international law. Yet John Milton's* Paradise Lost *is rarely considered alongside the history of international law. In this article, I contend that a robust history of international law in the 17th century would profit from engaging head on with literary texts like* Paradise Lost. *Milton's understanding of the law of nations provides legal scholars with a richer intellectual history of 17th-century international law than that typically on offer – one more sensitive to humanist methods, literary texts, and embodied questions of vulnerability. Approaching the intellectual history of the law of nations dialectically, I suggest that a full reckoning of Milton's law of nations in* Paradise Lost *requires a careful balance of presentism and openness to alterity – presentism in the sense that we might appreciate how strongly Milton's law of nations resonates with debates about international law in our own time, and alterity in the sense that Milton's law of nations encompassed much that many of today's readers would hardly recognize as 'international law'. A full intellectual history of Milton's law of nations, then, may require us partly to estrange that term – to set aside a priori definitions of the 'international' and resist easy transhistorical transpositions from Milton's late Renaissance world to our own – but it also requires a paradoxical domestication of the law of nations, a making familiar, a bringing into one's home.*

This article focuses on a figure who has, with one notable exception, largely remained off the radar for historians of international law. The poet, republican theorist, and Secretary of Foreign Tongues for the English commonwealth, John Milton (1608–1674), is rarely considered alongside what might be called the 'Carnegie canon' in stories of international law, but that is not because he had nothing to say about the law of nations. In fact, as I will argue, Milton's understanding of the law of nations provides legal scholars with a richer intellectual history of 17th-century international

* Department of English, Carnegie Mellon University, Pittsburgh, PA 15213, USA. Email: cnwarren@cmu.edu.

law than that typically on offer – one more sensitive to humanist methods, literary texts, and embodied questions of vulnerability.

For writers on the law of nations from Vitoria to Pufendorf, international law was more of an art than a science. Sources of the law of nations could be found in ancient poetry; legal theorists were also poets, translators, and literary critics; studying the law of nations required skills in philology – the study of words and their historical usages and contexts – while training in rhetoric was central to communicating it. What rhetorical theory called 'invention' (*invenio*) – the finding or discovery of facts, phrases, laws, and documents – was a core competence in law of nations discourse. While these aspects of the early modern law of nations are seemingly well known – indeed, they can hardly be missed by readers of Gentili or Grotius, for example – recent scholarship exhibits a kind of paradox: accounts of 16th- and 17th-century international law regularly offer stories considerably more narrow.

According to one version of the usual story, rehearsed in monographs and textbook introductions alike, the early modern law of nations progressed from the school of Salamanca, to Alberico Gentili, through Hugo Grotius and Richard Zouche, then on to Samuel Pufendorf, Vattel, and so on. While the precise contributions of each of these writers is characterized in different ways, the figures – and the genres – are remarkably consistent.

Told as a baton-passing narrative of great legal thinkers, however, our picture of the early modern law of nations remains somewhat constrained. Only rarely does the story depart from the 22 volumes included in the Carnegie *Classics of International Law* series. And while some scholars have rightly put Renaissance 'humanism' at the centre of their accounts of international law in the age of Westphalia, further work remains to be done to draw out the full methodological implications of the humanist thesis, whose emphasis to date has largely been on doctrinal consequences of the Renaissance rhetorical tradition.[1] The figure of Milton, I want to suggest, offers new perspectives and directions.

Indeed, Milton's views on the law of nations remain under-studied. While it is well known, among Milton specialists at least, that Milton argued from natural law and from divine law, the law of nations has not received the same attention: Milton has seemed like a figure with little to offer those interested in the history of international law. One of the reasons Milton's views on the law of nations have been less studied than those of other writers may be because his law of nations translates less easily into the 20th-century idiom of international law that was privileged, for example, by the editors and translators of the *Carnegie Series*. Whereas writers like the Salamanca theologians, Gentili, Grotius, and Pufendorf put the laws of war and just title at the centre of their accounts of the law of nations, Milton's most expansive prose treatment of the law of nations came in the context of concerns that have since largely

[1] R. Tuck, *The Rights of War and Peace: Political Thought and the International Order from Grotius to Kant* (1999); D. Panizza, *Political Theory and Jurisprudence in Gentili's De Iure Belli: The Great Debate Between 'Theological' and 'Humanist' Perspectives from Vitoria to Grotius* (2005); Warren, 'Hobbes's Thucydides and the Colonial Law of Nations', 24 *The Seventeenth Century* (2009) 260.

been severed from the domain of 'public international law', namely marriage and divorce.

Challenging a priori notions of the 'international', therefore, Milton's substantive views on the law of nations can provide a different perspective from that normally adopted by historians of public international law. Most significantly for my argument, Milton's theory of the law of nations was not limited to prose. This is why I insist that the methodological implications of the humanism thesis need further drawing out. To take humanism seriously, I contend, would be to take seriously a fuller range of humanist practices, techniques, and approaches. For 17th-century writers like Gentili, Milton, and Grotius, who were steeped in the *trivium*, humanism involved not only a renewed appreciation for classical rhetoric but also a difficult-to-overestimate sensitivity to narrative, literary form, and poetic technique. Understanding Milton's law of nations, then, requires consideration not only of topics relatively distant from the inherited ken of publicists, such as marriage and divorce, but also of a little-considered form, in particular the form of epic poetry, famously employed by Milton in *Paradise Lost* (1667). As we shall see, Milton therefore has both substantive and methodological lessons to impart to contemporary lawyers and scholars about the 17th-century history of international law.

Broadly speaking, Renaissance legal theory identified three types of law. Between natural law ('a law not specific to mankind … but common to all animals', according to the Roman Digest) and civil law (the unique code of a given society) most theorists included an intermediary law, the *ius gentium* or law of nations, seen as 'common only to human beings among themselves'.[2] In this tripartite account, the law of nations was widely considered a uniquely human artifact formed to ameliorate the violent effects of natural liberty – a set of pragmatic conventions that held sway, albeit varying, in arguments and Admiralty courts increasingly spanning the globe.

When Milton jotted a Latin reference in his commonplace book to Justinian's *Institutes*, it was to a passage giving precisely this tripartite account of law. Although the standard English translation opts for Jeremy Bentham's late 18th-century coinage 'international' over Milton's preferred 'law of nations' or 'national law' (where Milton's Latinate 'national' meant 'of nations'), Milton's note is nevertheless suggestive: '[w]hat those skilled in the law declare concerning natural, international, and civil law', Milton writes, 'see Justinian. institute Book 1. tit[le] 2'.[3] Milton's *Paradise Lost* is rarely considered alongside the history of international law. In this article, I contend that a robust history of international law in the 17th century would profit from engaging head on with literary texts like *Paradise Lost*.

As noted above, Milton's import for historians of international law has not gone entirely unnoticed, however. For the historian of international law William Grewe in

[2] Justinian, *The Digest of Justinian* (trans. A. Watson, 1985), at I.1.3–4.

[3] J. Milton, *Complete Prose Works* (ed. D.M Wolfe, 1953) at 1.426. On Renaissance commonplace books and the law see Sherman, 'Sir Julius Caesar's Search Engine', in W. Sherman (ed.), *Used Books: Marking Readers in Renaissance England* (2008); Hoeflich, 'The Lawyer as Pragmatic Reader: The History of Legal Common-Placing', 55 *Arkansas L Rev* (2002) 88; and more broadly A. Blair, *Too Much to Know: Managing Scholarly Information before the Modern Age* (2010).

his controversial 'classic' *The Epochs of International Law*, it was Milton himself who offered the death blow to an entire epoch, the one founded on the principle that discovery brought legal title.[4] As Grewe puts it, working on the assumption that Milton as Latin Secretary for Oliver Cromwell's government was the author of a 1655 English document declaring war against Spain, *Declaration of the Lord Protector*, 'even if it did not attract much attention in the theory of the law of nations, the final turning point in the history of [the principle of discovery] was Milton's polemic against this "imaginarius titulus" in his memorandum of 1655'.[5] Grewe's use of Milton is not unproblematic, as I will suggest in the first of this article's three parts. Milton's authorship of the *Declaration* is debated among Milton specialists. And Grewe's *Epochs* has troubling roots in Nazi intellectual history. Yet Grewe was one of the few to consider what Milton might offer to historians of international law. What Grewe seemingly had little interest in determining, however, was whether prose was the only medium in which it was possible to critique legal arguments or to explore just title. Milton's admired Hugo Grotius was the author of 25,000 lines of poetry; the Oxford Professor of Civil Laws Alberico Gentili had been a part of a circle of humanists intensely interested in epic conventions.[6] In such context, surely it matters that Satan, whom Milton compares to 'a scout' who 'Obtains the brow of some high-climbing hill, / Which to his eye discovers unaware / The goodly prospect of some foreign land', is the only character in *Paradise Lost* who thinks his 'discovery' of the New World is legitimate title (3.543–548).[7] A careful reading of *Paradise Lost* in fact suggests that Milton was equally as interested in the epochs of international law as was Grewe.

Although studies of *Paradise Lost* occasionally mention the law of nations, and despite growing current interest in the history of international law, the overwhelming tendency in Milton scholarship has been to focus on natural law. In accounting for this tendency, we need not look much further than Milton himself: Milton's precise legal taxonomy can be challenging to unravel, and though he mentions the law of nations in pamphlets such as *Tetrachordon* and *Of True Religion,* in his dramatic poem *Samson Agonistes,* and many times in his diplomatic letters, the term appears nowhere in *Paradise Lost.* 'Nature', by contrast, appears 64 times in *Paradise Lost* alone.[8] Yet few modern readers of Milton's epic would deny that problems of recognition, of legal categorization, of precept and example, case and rule, fact and

4 Roelofsen, 'Review of The Epochs of International Law by Wilhelm G. Grewe', 98 *AJIL* (2004) 867.

5 W. Grewe, *The Epochs of International Law* (trans. M. Byers, 2nd edn, 2000), at 255.

6 Craigwood, 'Sidney, Gentili, and the Poetics of Embassy', in R. Adams and R. Cox (eds), *Diplomacy and Early Modern Culture* (2011) at 82; Warren, 'Gentili, the Poets, and the Laws of War', in B. Kingsbury and B. Straumann (eds), *The Roman Foundations of the Law of Nations: Alberico Gentili and the Justice of Empire* (2011).

7 All references to *Paradise Lost* are to the following edition and will be cited parenthetically in the text. J. Milton, *Paradise Lost* (ed. A. Fowler, 2nd edn, 1998).

8 It may be for such reasons that one recent writer could confidently quote lines from *Paradise Lost* in the service of his sovereignest argument, conveniently ignoring the Milton who wrote such passages as the following, from *The Tenure of Kings and Magistrates* (1649): '[h]e ... that keeps peace with me, neer or remote, of whatsoever Nation, is to mee ... an Englishman and a neighbour': J.A. Rabkin, *Law Without Nations?: Why Constitutional Government Requires Sovereign States* (2007), at 9; Milton, *supra* note 3, at 3.215.

norm – many of them carefully narrated to evoke contemporaneous dilemmas of globalization – are precisely what give *Paradise Lost* much of its abiding purchase. If, for example, extraterritoriality is a fact shared by Milton's Satan, Sin, Death, Raphael, Michael, and the Son, many of Milton's phrases and allusions in *Paradise Lost* seem calculated to foreground the interpretive difficulty of distinguishing among the diplomats, merchants, warriors, pirates, missionaries, refugees, and spies his characters variously resemble. Since the capacity properly to recognize such figures was precisely what writers tried to effect in the so-called 'hundred year book war' over the law of nations that began in the 16th century, I will suggest in the second section of this article that early modern debates over the law of nations form an important though little-noticed background for Milton's depiction of Sin and Death from Book 10. In this section, the term 'law of nations' is roughly synonymous with Bentham's 'international law'. The context in which I situate Milton should be familiar to many historians of public international law – even if the use of a literary text purposefully troubles certain assumptions about the autonomous development of international legal doctrines. Yet it is also crucial to recognize that while Milton's law of nations bore important relations with today's public international law, it is hardly synonymous with it. As Mark Janis has shown, although Bentham cast his coinage of 'international law' as innocently equivalent to what earlier writers called the law of nations, his 'international law' was in fact far more limited in scope than the law of nations as understood by writers up to and including Blackstone, in particular since it explicitly excluded individuals from the purview of the international.[9] Thus, the third and final section of the article provides a picture of the law of nations that is in many ways far stranger than that usually conjured up by the term international law in modern contexts but which at the same time emphasizes precisely those material, embodied, and affective aspects of the law of nations that have tended to be obscured in our age of modern bureaucratized global institutionalism.

By approaching the intellectual history of the law of nations dialectically in these two distinct ways, I aim to suggest that a full reckoning of Milton's law of nations in *Paradise Lost* requires a careful balance of presentism and openness to alterity – presentism in the sense that we might appreciate how strongly Milton's law of nations resonates with debates about international law in our own time, and alterity in the sense that Milton's law of nations encompassed much that many of today's readers would hardly recognize as 'international law'. A full intellectual history of Milton's law of nations, then, may require us partly to estrange that term – to set aside *a priori* definitions of the 'international' and resist easy transhistorical transpositions from Milton's late Renaissance world to our own – but it also requires a paradoxical domestication of the law of nations, a making familiar, a bringing into one's home. With a better understanding of Milton's law of nations, I want to suggest, Bentham's term 'international law' may re-emerge through *Paradise Lost* as a distancing term, one through which commentators tend to estrange mortality and the embodied finitude

[9] Janis, 'Jeremy Bentham and the Fashioning of "International Law"', 78 *AJIL* (1984) 405.

of creaturely life.[10] The 'epoch' to which Milton belongs may then have less to do with legal doctrine than with the expressive forms doctrines are permitted to take. It is in this sense, as I aim to show, that a robust intellectual history of the law of nations in the 17th century should include literary history.

1 Epochs of International Law

Recent years have seen increased interest in the history of international law, and with that growth has occurred a corresponding interest in the periodization schemes historians of international law have employed. Most prominently, the Peace of Westphalia of 1648 has been seen as a watershed event around which to construct powerful narratives regarding the birth of the modern international order; in the much-followed words of Henry Wheaton, 'the peace of Westphalia, 1648, may be chosen as the epoch from which to deduce the history of the modern science of international law'.[11] For other writers, the 'myth of 1648' has seemed plausible only through too much reliance on dubious historical assumptions.[12] Debates regarding the meaning of the Peace of Westphalia are part of a larger landscape of historiographical debates in which early modern Europe often plays a key role. As if to confirm Frederic Jameson's comment that 'we cannot not periodize', writers on the history of international law have advanced schemes such as the 'age of the prince', 'the age of the judge', and the 'age of the concert'; the theological, metaphysical, and positivist ages; pre-history, political economy, and international law; and even 'primitive' and 'modern'.[13]

In Grewe's *The Epochs of International Law*, periodization follows great power politics. The book, not printed until 1984 but largely drafted 40 years earlier, is organized into six parts.[14] Following a section on the law of nations in the middle ages, Grewe devotes space to 'the Spanish Age' (1494–1648), to 'the French Age' (1648–1815), and to 'the British Age' (1815–1919), before his 20th-century sections on 'the inter-War period' (1919–1944), 'American-Soviet rivalry and the Rise of the Third World' (1949–1989), and finally the post-1989 'International community with a Single Superpower'. His accounts of the Spanish age, the French age, the English age rest on

[10] I borrow the phrase 'creaturely life' from E.L. Santner, *On creaturely life: Rilke, Benjamin, Sebald* (2006), acknowledging that its Heideggerian overtones sit somewhat discordantly with the discussion of Nazi ideology that follows.

[11] H. Wheaton, *History of the Law of Nations in Europe and America: From the Earliest Times to the Treaty of Washington, 1842* (1845), at 69; Butler, 'Periodization and International Law', in A. Orakhelashvili (ed.), *Research Handbook on the Theory and History of International Law* (2011), at 379. This para. draws broadly from Butler.

[12] Krasner, 'Westphalia and All That', in J. Goldstein and R.O. Keohane (eds), *Ideas and Foreign Policy: Beliefs, Institutions, and Political Change* (1993), at 235; B. Teschke, *The Myth of 1648: Class, Geopolitics, and the Making of Modern International Relations* (2003); Beaulac, 'The Westphalian Model in Defining International Law: Challenging the Myth', 8 *Australian J Legal Hist* (2004) 181; R. Joyce, *Competing Sovereignties* (2013), at 182–189.

[13] F. Jameson, *A Singular Modernity: Essay on the Ontology of the Present* (2002), at 29.

[14] Grewe's German *Epochen der Völkerrechtsgeschichte* was first published in 1984. Michael Byers translated the book into English as *The Epochs of International Law* in 2000.

Grewe's search for an age's 'predominant power', its geo-temporal locus of 'political leadership'.[15] While Grewe described his approach as one aiming at 'morphological division, its periodisation, and the development of a system of typological concepts', major treatises, debates, and doctrines are all treated through the lens of an international political theory that explicitly privileges 'hegemony' and 'world dominance'.[16] Positioned against the 'numerous authors examining the history of the law of nations [who] adopted a peculiar and methodologically questionable separation of theory and State practice',[17] Grewe in effect returned to the classical trope of *translatio imperii* that saw empire move from country to country, making it the starting point for his legal history. To the extent that Grewe traced 'typological concepts', it was within 'orders' that had been set by epoch-making powers. Grewe himself understood this to be an important feature of his analysis: whereas writers like Kelsen had earlier advanced a 'pure' theory of international law, Grewe sided with Carl Schmitt and others unwilling to separate international legal history from those 'concrete' political orders within which international law took shape and for which particular legal theories and arguments had been deployed.[18]

Grewe saw little value in autonomous histories of international law. A proper understanding of the history of international law required clear-eyed accounts of political might. As Bardo Fassbender points out, Grewe's unrelenting focus on epochs of world domination testifies to the work's intellectual origins in 1940s Germany when histories of international law became deeply instrumentalized in the service of Nazi ideology and foreign policy. Sharing with Hegel, Schmitt, and Martin Heidegger an interest in epochal periodization, Grewe's approach accorded strongly with his 1940 appointment at the University of Berlin to lecture on the 'Legal Foundations of Foreign Policy', and, as Fassbender argues, with Third Reich international legal theory more broadly.[19] For his early modern history, Grewe draws from the work of Gerhard Oesterich, whose study of Justus Lipsius, neo-stoicism, and the early modern state, in Peter N. Miller's words, 'seems to pick up every single nuance and echo of the National Socialist language of *Erziehung zum Wehrwillen* [education to war-readiness]'.[20] *Epochs* cites Schmitt approvingly numerous times, and it shares Schmitt's Nazi obsessions with world dominance, 'concreteness', and 'orders'. In keeping with this intellectual pedigree, 'narrow, dogmatic pacifism' was a particular object of Grewe's scorn.[21]

For all its deep faults, however, Grewe's work does at least have the merit of inquiring into what a figure like Milton might tell us about the history of international law. Despite

[15] Grewe, *supra* note 5, at 139.

[16] *Ibid.*, at 1, 137, 279.

[17] *Ibid.*, at 2.

[18] C. Schmitt, *The Nomos of the Earth in the International Law of the Jus Publicum Europeaum* (tr. G.L. Ulmen, 2003); Teschke, 'Decisions and Indecisions: Political and Intellectual Receptions of Carl Schmitt', 67 *New Left Rev* (2011) 61.

[19] Fassbender, 'Stories of War and Peace: On Writing the History of International Law in the "Third Reich" and After', 13 *EJIL* (2002) 479, at 493.

[20] Miller, 'Nazis and Neo-Stoics: Otto Brunner and Gerhard Oestreich Before and After the Second World War', 176 *Past and Present* (2002) 144, at 177.

[21] Grewe, *supra* note 5, at 2.

the key transitional role Milton plays in Grewe's history, however, Grewe's treatment of Milton has seemingly escaped comment. Grewe is right that the *Declaration of the Lord Protector* was hardly noticed in 17th-century jurisprudence, so scholars interested in the history of international law from a theoretical perspective have had little reason to engage with it. And while literary historians and historians of political thought have justly emphasized aspects of Milton's legacy in such developments as the rise of English blank verse and the history of republicanism, the history of international law has never, until quite recently, seemed a productive context for Milton specialists.[22] Even though Milton refers to Justinian on 16 occasions and apparently left a substantial library of law books at his death, Lynn Greenberg observes, in a 2010 essay, 'the reach of Milton's influence on legal matters remains a significant gap in current research and merits further investigations'.[23] 'One of the greatest holes in our scholarship', she continues, 'is just how influential a role Milton played in legislative reform and foreign relations in his official capacity as Secretary of Foreign Tongues'.[24] Grewe was one of the few exceptions to the rule that Greenberg rightly identifies.

Milton's function in Grewe's work is, however, slightly more complicated than it might otherwise appear, not least for the 'cultural capital' Milton lends to Grewe's broadest claims. The *Declaration* is important in its own right for Grewe, but it is clear that Milton's authorship of it is too. Grewe discloses that authorship with dramatic flair:

> In 1655, the arguments in the great debate over the legal titles of the colonial expansion were once again summarised on the English side in a manifesto which Oliver Cromwell had ordered published at the beginning of the Anglo-Spanish War, to justify his actions. It was entitled *Scriptum Domini Protectoris Reipublicae Angliae, Scotiae, Hiberniae etc. Ex consensu atque Sentential Concilii sui editium. In qua huius Reipublicae causa contra Hispanos iusta esse demonstratur.* The author of this important State pamphlet was none other than the poet and philosopher John Milton.[25]

[22] Peters, 'A "Bridge over Chaos": De Jure Belli, Paradise Lost, Terror, Sovereignty, Globalism, and the Modern Law of Nations', 57 *Comp Lit* (2005) 273; Oldman, 'Milton, Grotius, and the Law of War: A Reading of Paradise Regained and Samson Agonistes', 104 *Studies in Philology* (2007) 340; Oldman, '"Against Such Hellish Mischief Fit to Oppose": A Grotian Reading of Milton's War in Heaven', 18 *War, Literature, and the Arts* (2006) 143; Dzelzainis, 'The Politics of Paradise Lost', in N. McDowell and N. Smith (eds), *The Oxford Handbook of Milton* (2009); Binney, 'Milton, Locke, and the Early Modern Framework of Cosmopolitan Right', 105 *Modern Language Rev* (2010) 31. Although I consider it important to keep intact the conceptual distinction between colonialism and international law (the two terms are not synonymous however much they have historically overlapped), it is worth mentioning a substantial body of work on Milton and colonialism, perhaps most influentially Armitage, 'John Milton: Poet Against Empire', in D. Armitage, A. Himy, and Q. Skinner (eds), *Milton and Republicanism* (1995); D. Quint, *Epic and Empire: Politics and Generic Form from Virgil to Milton* (1993); Stevens, 'Paradise Lost and the Colonial Imperative', 34 *Milton Studies* (1996) 3; J.M. Evans, *Milton's Imperial Epic: Paradise Lost and the Discourse of Colonialism* (1996).

[23] Greenberg, 'Law', in S.B. Dobranski (ed.), *Milton in Context* (2010), at 328. But see Skinner, 'John Milton and the Politics of Slavery', in Q. Skinner, *Visions of Politics* (2002), ii, at 286; E. Visconsi, Lines of Equity: Literature and the Origins of Law in Later Stuart England (2008), at 15; Fish, 'To The Pure All Things Are Pure: Law, Faith, and Interpretation in the Prose and Poetry of John Milton', 21 *L and Literature* (2009) 78; Posner, 'Penal Theory in Paradise Lost', in R. Posner, *Law and Literature* (3rd edn, 2009), at 251.

[24] Greenberg, *supra* note 23, at 335–336.

[25] Grewe, *supra* note 5, at 248.

Something more than a dutiful mention of authorship is clearly at stake in Grewe's powerful unveiling ('none other than … Milton'). Grewe's heightened language – what rhetorical theory calls *litotes*, or denial of the contrary – helps us to see how Milton's involvement validated aspects of Grewe's method. While hegemony was Grewe's main organizing criterion, it was supplemented by Hegelian assumptions about the relations between geopolitical power, *geist*, and national culture. For instance, it was a sign of France's limited efficacy in 'the Spanish age' that it 'did not produce a Grotius'.[26] With 'Grotius' here standing metonymically for lastingly important work in the law of nations, Grewe implied that nations 'produced' their theorists of international law in ways commensurable with their national prowess. There were strong affinities in such moves with German trends associated with Nazi historiography that emphasized a 'new interdisciplinarity'. Whereas earlier scholars had succumbed to the fragmentation of modernity, these new historians understood their new interdisciplinary methods to reorient scholarship toward the proper and interdisciplinary object of history, the *Volk*, and its relation to 'concrete orders'.[27]

Hegemony was also a matter of 'style' for Grewe. For example, the age of French predominance 'was marked by the style of French politics and culture'; when a French author and an English author – in this case, the famous Daniel Defoe – expressed roughly the same doctrinal point, it was the English author whose words were 'less elegant'.[28] Certain nations at certain times produced 'no important literary works', where the term 'literary' was used expansively enough to include not just poems and plays but also treatises and theories. (Grotius' *De Jure Belli ac Pacis* too was a 'literary' work.[29]) Grewe's interest in 'style' was based, as he himself says, 'on the conviction that it is important to recognize and demarcate the close connection between legal theory and State practice, and to comprehend that both are forms of expression of the same power, which characterize the political style of an epoch just as much as its principles of social, economic, and legal organization'.[30] It was from such assumptions that capital-C Culture could be seen as an index of geopolitical might. That such a 'poet and philosopher' as Milton would be writing against Spanish claims was not happenstance according to Grewe's picture of the world. Rather, it obliquely confirmed the rising English challenge to Spanish dominance. Using notably literary metaphors, Grewe affirmed that 'the protagonists in the struggle against the Spanish claims for dominion of the seas were, successively, the French, the English, and the Dutch', and that England 'took over the leading role in the struggle for the freedom of the seas'.[31] England could 'produce' a Milton insofar as it was a world protagonist and leading actor on the way towards imposing its own epoch.

Given Grewe's use of Milton's literary prestige to support his theoretical edifice, one might expect he would have had something to say about imaginative texts, but they in fact played no role in his analysis. It would be wrong to fault Grewe alone for this: few writers on

[26] *Ibid.*, at 261.
[27] Miller, *supra* note 20, esp. at 156.
[28] Grewe, *supra* note 5, at 279, 338.
[29] *Ibid.*, at 261.
[30] *Ibid.*, at 6.
[31] *Ibid.*, at 260–261.

the history of international law have seen much promise in analysing literary texts. Yet the 'intellectual genealogy of our modern international law' that Theodor Meron finds across a range of Shakespeare's works also extends beyond the Shakespearean corpus.[32] In the case of Milton, it is a signal mistake to write off literary texts. Unlike with Shakespeare, for whom no prose is available to compare, Milton left a wide body of work in pamphlets, treatises, and diplomatic letters that confirm his knowledge and interest in the law of nations.

Whatever his role in fact was in the anonymously published and translated *Declaration of the Lord Protector* – as one recent scholar has put it, at the very least, 'it is unlikely that [Milton] would have found much to quarrel with in the declaration' – Milton was indisputably a reader of 17th-century titans of international law like Hugo Grotius and John Selden.[33] According to his *Second Defense*, a Latin work justifying the English Revolution in the court of Continental public opinion, Milton had met Grotius in Paris in the 1630s. He speaks of having been introduced by the ambassador Thomas Scudamore, who 'on his own initiative introduced me, in company with several of his suite, to Hugo Grotius, a most learned man (then ambassador from the Queen of Sweden to the King of France) whom I ardently desired to meet'.[34] In Milton's divorce tracts alone, he cites Grotius 10 times.[35] In *Areopagitica* (1644), Milton praised Selden as 'the chief of learned men reputed in this land' and singled out for special praise Selden's 'volume of naturall & national laws', *De Jure Naturali et Gentium* (1640), for proving 'not only by great authorities brought together, but by exquisite reasons and theorems almost mathematically demonstrative, that all opinions, yea errors, known, read, and collated, are of main service & assistance toward the speedy attainment of what is truest'.[36] In *The Doctrine and Discipline of Divorce,* a work discussed by Pufendorf in his *De Jurae Naturae et Gentium* (1672), Milton lauded that same Selden volume as a salve for canon lawyers and Catholic theologians who had 'dissipated and dejected the clear light of nature in us, & of nations'.[37] Selden's *De Jure Naturali et Gentium* was 'a work more useful and more worthy to be perused by whosoever studies to be a great man in wisdom, equity, and justice, than all those "decretals and sumless sums"'.[38] Milton was almost certainly familiar with Vitoria

[32] T. Meron, *Bloody Constraint: War and Chivalry in Shakespeare* (1998), at 4; T. Meron, *Henry's Wars and Shakespeare's Laws: Perspectives on the Law of War in the Later Middle Ages* (1993). See also Warren, *supra* note 6.

[33] Dzelzainis, *supra* note 22, at 559. That Milton had little to say about Gentili is curious, but it can partly be explained by Gentili's notorious albeit late-developing royalism, discussed in Sharp, 'Alberico Gentili's Obscure Resurrection as a Royalist in 1644' in conference proceedings, *Alberico Gentili: l'ordine internazionale in un mondo a più civiltà: atti del convegno Decima Giornata Gentiliana, San Ginesio, 20–21 Settembre 2002* (2004), at 285.

[34] Milton, *supra* note 3, at 4.1.615.

[35] Rosenblatt, 'Milton, Natural Law, and Toleration', in S. Achinstein and E. Sauer (eds), *Milton and Toleration* (2007), at 126; J. Rosenblatt, *Renaissance England's Chief Rabbi: John Selden* (2006), at 135–157.

[36] Milton, *supra* note 3, at 2.513.

[37] Milton, *supra* note 3, at 2.351. For Pufendorf's critique of Milton see S. Pufendorf, *De Jure Naturae Et Gentium Libri Octo* (ed. W. Simons, trans. C.H. Oldfather and W.A. Oldfather, 1934), at 2.883–2.888.

[38] Milton, *supra* note 3, at 2.350. On canon law and the law of nations generally see Muldoon, 'Medieval Canon Law and the Formation of International Law'. 125 *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte Kanonistische Abteilung* (1995) 64.

as well, having added to his commonplace book passages from Samuel Purchas's *Hakluytus Posthumus, or Purchas His Pilgrime*, a work that included accounts of the famous Salamanca School debates.[39] Over the 1650s, Milton as Secretary of Foreign Tongues for the Council of State authored or translated over 150 documents relating to treaties and diplomatic disputes, many of them dealing explicitly with the law of nations. In yet another context, his 1660 pamphlet *Brief Notes Upon a Late Sermon*, a last-ditch republican effort to forestall the Restoration of the monarchy that Milton wrote around the time he began *Paradise Lost* (1658 being a much-cited start date), Milton treated the question of just conquest by the law of nations. He claimed that since the Parliament's war against Charles I had been just, 'the conquest was also just by the Law of Nations'.[40] Even what Milton calls in his most systematic theological work, *De Doctrina Christiana*, 'positive right' or positive law (*ius positivum*), bears an important relationship to what Milton elsewhere calls the secondary law of nations. Milton, in short, has left us a diverse and formidable collection of engagements with the law of nations in prose.

Beyond simply suggesting that Milton was deeply familiar with 17th-century discussions of the law of nations, it is the broader purpose of this article to suggest that Milton's engagements with international legal theory were not limited to prose. How *Paradise Lost* intersected with the early modern law of nations can be illustrated in three main ways: through Milton's knowledge of Grotius' poetry, his concern with the Fall, and his choice of the epic genre. Milton knew not only Grotius' *De Jure Belli ac Pacis* and Grotius' highly-regarded biblical commentaries but also his poetry. So similar is *Paradise Lost* to Grotius' earlier biblical tragedy *Adamus Exul* (1601), in fact, that an 18th-century Jacobite named William Lauder found enough echoes to accuse Milton of forgery, though not without duplicitously altering Milton's poem to fit the charge. Disingenuous though it was, Lauder's analysis of verbal echoes in Milton's poetry has set the path for more sympathetic modern studies linking the two authors' poetry.[41]

Meanwhile, the shared subject of *Adamus Exul* and *Paradise Lost*, the Fall, was a fundamental component of early modern thought regarding natural law and the law of nations. If the 'epochs' of the history of international law followed great power politics for Grewe, for Milton they followed the biblical narrative. Having himself considered writing a tragedy with the Grotian title *Adam Unparadised,* Milton was among the many Christian thinkers for whom Roman law in conjunction with the Genesis narrative told a kind of tragic story of the law of nations. According to the picture of natural law developed by Ulpian and adopted in slightly modified Christian form by

[39] Jablonski, 'Ham's Vicious Race: Slavery and John Milton', 37 *Studies in Eng Lit, 1500–1900* (1997) 173, at 174.

[40] Milton, *supra* note 3, at 7.481.

[41] J.M. Evans, *Paradise Lost and the Genesis Tradition,* (1968); Hillier, 'Grotius's Christus Patiens and Milton's Samson Agonistes', 65 *The Explicator* (2006) 9; Wittreich, 'Still Nearly Anonymous: Christos Paschon', 36 *Milton Q* (2002) 193. In addition to works mentioned in *supra* note 22, see also Kahn, 'Disappointed Nationalism: Milton in the Context of Seventeenth-century Debates About the Nation-state', in D. Loewenstein and P. Stevens (eds), *Early Modern Nationalism and Milton's England* (2008), at 249.

thinkers from Vitoria to Milton, men first existed unconstrained by human laws or government. In this *status naturae*, it made little sense to differentiate between men and beasts since there existed none of the human laws or institutions that fell broadly under the term of civilization. Ulpian's *ius naturale*, in Annabel Brett's words, was the 'purely non-coercive, instinctual sphere of right action'.[42] Subsequently, Aquinas and the scholastics found in Genesis' distinction between nakedness, the mark of innocence, and clothing the mark of fallen-ness, an important illustration of the relation between natural law and the law of nations. If natural law was a set of first principles, the law of nations involved reasonable deductions from those principles. Reason, Aquinas argued, informed humans about things regarding which God had not introduced the contrary. God had not prohibited clothes; humans reasoned about the need for clothes; and clothes thereby became universal as part of the law of nations even though God, and thus divine law, had been silent on the matter. Aquinas writes:

> we could say that it belongs to the natural law that human beings are naked, since nature did not endow them with clothes, which human skill created. And it is in the latter way that we say that 'the common possession of all property and the same freedom for all persons' belong to the natural law, namely, that the reason of human beings, not nature, introduced private property and compulsory servitude. And so natural law in this respect varies … by way of addition.[43]

This was a kind of solution to an embedded puzzle in Roman law, for elsewhere Roman law said it was only '[a]s a consequence of [the law of nations that] wars were introduced, nations differentiated, kingdoms founded, properties individuated, estate boundaries settled, buildings set up, and commerce established, including contracts of buying and selling and letting and hiring'. The apparent disjunction between natural law and the law of nations prompted some early modern writers to consider the law of nations wholly without positive content, a 'zone of permission left over from natural law'.[44] Others understood the law of nations in two senses, a primary sense that was equivalent to natural law and a secondary, positivist sense that, in some cases, even contravened natural law.[45] We shall see how Milton was closest to the latter group, but the point for now is that, for all their puzzlement, almost all Christian readers turned to the Genesis narrative to fill in the perceived gap between natural law and the law of nations. Whereas *ius naturae* named the radical innocence recalled, for example, by Gonzalo's speech in *The Tempest* invoking a land of 'no sovereignty', the law of nations was the legal order for fallen man.[46] As Martti Koskenniemi explains, 'the pre-lapsarian *ius naturae* … was adjusted in the world of real human beings by a consensual and historical *ius gentium*'.[47] The story of *Paradise Lost* was, among other things, a story of how 'national law'– the law of nations – came to be.

[42] A. Brett, *Changes of State: Nature and the Limits of the City in Early Modern Natural Law* (2011), at 99.

[43] T. Aquinas, *Treatise on Law* (trans. R.J. Regan, 2000), at 42 (ST 94.5).

[44] Brett, *supra* note 42, at 87–88.

[45] Tierney, 'Vitoria and Suarez on Ius Gentium, Natural Law, and Custom', in A. Perreau-Saussine and J.B. Murphy (eds), *The Nature of Customary Law* (2007), at 101; Doyle, 'Francisco Suarez on the Law of Nations', in M.W. Janis and C. Evans (eds), *Religion and International Law* (1999), at 103.

[46] See Shakespeare's *The Tempest* at Act 2, scene 1, line 153.

[47] Koskenniemi, 'International Law and Raison d'Etat: Rethinking the Prehistory of International Law', in Kingsbury and Straumann (eds), *supra* note 6, at 303.

While Milton shared Grotius' concern with the Fall, his was obviously an epic poem rather than a tragedy, although it did contain 'tragic' 'notes' (9.6). In transmuting the fall into an epic story, Milton was drawing the biblical narrative into conversation with a genre that had become highly significant to the Renaissance law of nations. From a modern perspective, it is a striking feature of the epic how much its conventional *topoi* sound like the canonical concerns of public international law. One law dictionary lists public international law as concerned with the 'formation and recognition of states, acquisition of territory, war, the law of sea and of space, treaties, treatment of aliens, human rights, international crimes, and international judicial settlement of disputes'.[48] As read by Renaissance writers like Andrea Alciato and Alberico Gentili, classical epics like Homer's *Iliad* and Vergil's *Aeneid* exemplified the 'public' side of the law of nations, fleshing out the bare bones of legal doctrine and argument.[49] In a context in which such epics were mined for the legal lessons they provided, it should not, then, be overly surprising that the canonical concerns of 'public international law' might just as well describe many of the most fascinating aspects of *Paradise Lost*. In the next section, I turn to a specific example from Book 10 of the poem.

2 Public International Law

How the epic tradition contributed to Milton's project can be illustrated by the memorable scene from Book 10 of Milton's *Paradise Lost,* in which the characters of Sin and Death become 'plenipotent[iaries]' charged with journeying to the new world (10.404). By looking at the ways in which epic was deployed in the 'hundred year book war', it becomes possible to understand Milton's scene as a satire that doubles as a legal argument. I suggest that Milton uses the episode to satirize a voraciously instrumental imperialism that has conscripted epic, linguistic, and legal conventions for seemingly fathomless imperial projects. Milton's conceit is that the Fall has opened up Paradise to Sin and Death, who build a bridge over chaos as they rejoin their leader Satan. Even as it registers the realities of 17th-century global trade and colonialism, it is a scene whose effectiveness relies intertextually upon the whole epic tradition, perhaps most importantly Vergil's *Aeneid,* Luis de Camões' Portuguese *Os Lusiads,* and Lucan's *Pharsalia*.

In the scene, Sin and Death journeying from Hell to Earth are implicitly compared to Vergilian refugees existentially exposed to nature, seeking their lost leader in Carthage. Their language, however, is that of merchant adventurers spouting the disingenuous cant of commercial cosmopolitanism. Had he looked to *Paradise Lost*, William Grewe might have been particularly well-placed to understand the intent of Milton's scorching satire. In the allusion to Book I of the *Aeneid*, Milton was laying bare the opportunistic Vergilianism that had featured heavily among Iberian writers on the law of nations beginning with the Spanish Dominican Francisco de Vitoria and extending

[48] Cf. 'International Law', in J. Law and E.A. Martin (eds), *A Dictionary of Law* (6th edn, 2006).

[49] Drysdall, 'Alciato and the Grammarians: The Law and the Humanities in the Parergon Iuris Libri Duodecim', 56 *Renaissance Q* (2003) 695; Warren, *supra* note 6.

into Camões' Portuguese epic *Os Lusiads* (1572). As Milton had reason to know from writers such as Grotius and Selden at the very least, the example of Vergil's Trojans was regularly exploited in legal texts written in justification of Iberian imperialism. Such uses – by Vitoria most prominently – repurposed a proof text that had been used earlier in defence of the migrant poor in the context of European debates over duties of charity.[50] As Milton's Sin speaks mystically of 'some connatural force/Powerful at greatest distance to unite/With secret amity' and again of 'intercourse' and 'transmigration', his readers are meant to feel the strain of merchants and empire builders being wrapped in altogether nobler languages of charity, *ius communicandi*, and Vergilian classicism.

It was Vitoria's *De Indis* (1539), in which he investigated possible sources of Spanish title in the New World, that ensured that interpretations of Vergil would be a persistent feature in the 'hundred-year book war' between Catholic and Protestant writers on the law of nations.[51] In particular, Ilioneus' appeal to Dido for hospitality ultimately became a *locus classicus* for the claim that hospitality was dictated by the law of nations – a claim that was more often than not closely followed by the further claim that neglected duties of hospitality were a just cause for war. Among Vitoria's 14 proofs that 'the Spaniards have the right to travel and dwell in those countries, so long as they do no harm to the barbarians, and cannot be prevented from doing so', his quotations from scripture and from Vergil held equal rhetorical weight ('a seventh proof is provided by Virgil's verses'; 'an eighth proof is given in the words of Scripture').[52] The quotation from Book 1 of *Aeneid*, moreover, was attended by remarkably little amplification or apology. Citing Vergil in this context apparently required little defence.

The appeal to Vergil can also be explained by the fact that, notwithstanding some Eurocentric fantasies to the contrary, classicism was hardly the singular preserve of European Christians. Like the English, French, Spanish, and Portuguese, Turks too claimed descent from Troy and Rome, a point known to readers of Montaigne's essays that was in fact made by many early modern humanists based on obvious similarities between Vergil's name for the Trojans, *Teucri*, and the Latin *Turci* or Italian *Turchi*.[53] Malaysian kings and other Southeast Asians traced their origins to Alexander the Great, whom one epic called a 'Roman from the country of Macedonia'. Vergil thus became a common reference point as Renaissance lawyers and humanists contributed to what Su Fang Ng has called the 'global Renaissance'.

Having been cited by Vitoria, the Ilioneus speech was then adduced in similar fashion by writers like Gentili, Grotius, and Selden. While the Trojans approaching foreign shores were for all of these writers enduring scenes of obligation no less fraught with legal meaning than with narrative import, seemingly all of the Protestant writers saw themselves as repairing an epic tradition recently put to dubious uses. The Trojan

[50] Brett, *supra* note 42, at 19.

[51] This term is attributed to Ernest Nye in Schmitt, *supra* note 18, at 178.

[52] F. de Vitoria, *Political Writings* (ed. A. Pagden, trans. J. Lawrance, 1991), at 278–279.

[53] Ng, 'Global Renaissance: Alexander the Great and Early Modern Classicism from the British Isles to the Malay Archipelago', 58 *Comp Lit* (2006) 293.

complaint against the initially inhospitable Carthaginians did confirm for Gentili one of the most important of the Iberians' legal claims for their excursions in the New World – that not only 'shores … are by nature accessible to all' but so too are 'the banks of rivers and rivers themselves, that is to say, [all] running waters'; and Gentili even acknowledged that 'the warfare of the Spaniards [in the New World] seems to be justified, because the inhabitants prohibited other men from commerce with them', but Gentili nevertheless sought to expose that the Spanish were truly seeking something else entirely: 'dominion'.[54] In his *Mare Liberum,* Grotius joined Gentili in discrediting Pope Alexander VI's notorious 'donation' of empire to the temporal Spanish and Portuguese monarchs, and shifted the geographic locus for Vergil's force from the New World to Southeast Asia, where Dutch and Portuguese merchants' encounters were becoming increasingly hostile. In certain ways, then, Milton was merely following the likes of other Protestant works in the hundred-year book war such as Gentili's *De Jure Belli Libri Tres* (1598), Grotius' *Mare Liberum* (1608), and Selden's *Mare Clausum* (1635).

Yet writing in the genre of epic enabled Milton to make and criticize arguments on different axes and in different ways. As claimed by Iberian writers, the rights of discovery were crucially dependent upon storytelling. It was Camões' *Os Lusiads* that had most powerfully depicted Da Gama's journey as the discovery of a trading route to Asia, taking readers episodically round the Cape of Good Hope and into the Indian Ocean.[55] Such discoveries entitled Portugal to exclude latecomers and to enjoy exclusive trading partnerships for Asian silks and spices, they argued. In response to Portugal's claims to exclusive trading rights in Southeast Asia by virtue of having discovered a navigable path there, Grotius, for one, had thrown the evergreen Vergilian enjoinments for hospitality back upon those Portuguese whom he and the Dutch East Indies Company denounced for prohibiting Dutch trade in the region. Yet arguments from discovery were crucially dependent upon the narrative resources at work in epic poetry.

Some writers, it is true, expressed scepticism about arguments based on 'old poets'.[56] Glancing in his margins all the way back to Vitoria, Selden for one complained against those claiming that 'by the Law of Nations it is unjust to denie Merchants or Strangers the benefit of Port, Provisions, Commerce, and Navigation'. '[F]or that', Selden wrote, 'the expedition of *Spain* against the *Americans* is pretended by very learned men to bee upon a just Ground because they denied them a freedom of Commerce within their Shores and Ports. And in justification hereof, They use that of *Virgil*, as spoken out of the Law of Nations; "What barb'rous Land this custom own's: what sort of men are these? Wee are forbid their port"'.[57] The Iberians' already hollow pretexts for war were made all the more flimsy by their appeal to epic poems.

[54] A. Gentili, *De Iure Belli Libri Tres* (trans. J. Carew Rolfe, 1933), at 2.90, 2.89. For the significance of rivers and inland waterways in early modern legal debates see L. Benton, *A Search for Sovereignty: Law and Geography in European Empires, 1400–1900* (2009).

[55] T. Hampton, *Fictions of Embassy: Literature and Diplomacy in Early Modern Europe* (2009), at 109–114.

[56] H. Grotius, *The Free Sea* (ed. D. Armitage, trans. R. Hakluyt, 2004), at 66; J. Selden, *Of the Dominion, or, Ownership of the Sea* (trans. M. Nedham, 1652), at 5.

[57] *Ibid.*, at 5.

As a poet, however, Milton undoubtedly saw an opportunity to intervene. Looking afresh at Milton's Sin and Death, it is useful to recall that Selden's Latin *Mare Clausum* had been translated into English in 1652 by Milton's collaborator and friend Marchmont Nedham, who could even have enlisted Milton's help in the project.[58] Even as Sin and Death's journey calls to mind the encounter at Carthage so often reproduced in legal texts, it is also told, somewhat incongruously, in the language of merchant adventurers. Vitoria had followed his proof text from Vergil with another proof from Ecclesiasticus that '[e]very living creature loveth his like' (these are Vitoria's seventh and eight proofs, respectively). As a Protestant for whom Ecclesiasticus was an apocryphal book of scripture, Milton relishes the chance to satirize this conjunction. Just as Vitoria had done, Milton in the beginning of Book 10 fuses Vergil with the quasi-scriptural lesson that '[e]very living creature loveth his like', but Milton's is an ironic reversal of the scriptural text, and it exposes as hollow the Vergilian humanitarian rhetoric of 'amity'.

Milton's satire is amplified by an allusion to yet another epic, Lucan's anti-Augustan *Pharsalia*. Famously, Vergil was the poet of arms and the man, but Lucan's charged republican subject, according to his own first sentence, was 'legality conferred on crime'.[59] As critics have noticed, the 'Bridge/Of length prodigious' Sin and Death erect over the 'foaming deep' called to mind a massive chain of ships Lucan's Caesar had used to circumscribe Pompey's forces in the Roman Civil War;[60] it also conjured up the powerful image of Europe and its American and Asian markets joined in an unnatural union by trade so vigorous that land and sea had become practically indistinguishable. From the perspective of Milton's republicanism and Protestantism, violent conflicts between two Protestant powers both flirting with republican governments and broadly tolerant church settlements seemed at times like the civil war at the heart of Lucan's poem. As early as 1641, Milton lamented in *Of Reformation* how the Protestant bonds between the English and the Dutch were jeopardized by merchants 'bicker[ing] in the East Indies'; at least one other poet of the 1650s recalled Lucan in the context of Anglo-Dutch wars.[61] But strong anti-papal notes in the episode in Book 10 also suggest that as Spanish kings and conquistadors continuously compared themselves to Caesar crossing the Rubicon, so too could Britain and the Low Countries look from a slightly different angle like Pompey and Cato defending a global commonwealth from Catholics' 'Caesaro-papal' designs. The *Declaration of the Lord Protector* was hardly unique in the view 'there is not any understanding man who is not satisfied of the vanity of the Spaniards pretensions to the sole Sovereignty of all those parts of the world'.[62] In 1656, Milton's own nephew, John Phillips, translated Las Casas' *Destruction of the Indies*, an important critique of Spanish practices in the New World

[58] On Milton and Nedham see especially J. Raymond, *Pamphlets and Pamphleteering in Early Modern Britain* (2003); B. Worden, *Literature and Politics in Cromwellian England: John Milton, Andrew Marvell, Marchamont Nedham* (2007).

[59] Lucan, *The Civil War* (trans. J.D. Duff), at line 2.

[60] D. Norbrook, *Writing the English Republic: Poetry, Rhetoric and Politics, 1627–1660* (1998), at 459.

[61] Milton, *supra* note 3, at 1.587; Norbrook, *supra* note 60, at 294.

[62] J. Milton, *The Works of John Milton* (ed. F.A. Patterson, 1931), at 13.557.

that also propagated the so-called 'Black Legend' – the accounts of Spanish cruelty so influential in Protestant Europe. With Lucan operating as powerful solvent for mystifying Augustanism of all stripes, Milton found resources in the genre of epic that, without fully transcending the particularities of the conflicts with Spain, Portugal, and the Netherlands, could nevertheless critique all at once.

In Julie Stone Peters' perceptive reading, joined with God's own 'global rule of law', Milton's 'bridge over chaos' gives us 'two complementary myths about the cure for international disorder (the myth of coherent and delimited sovereignty, and the myth of neutral and beneficent globalism)'.[63] It is no doubt true, as she argues, that 'we are still living amidst the contradictions and incongruities of … Milton's claims regarding sovereignty and globalism, claims we translate into their late modern forms'.[64] But, as I emphasize below, to focus exclusively on the continuities between Milton's law of nations and modern public international law is potentially to miss arresting *dis*continuities capable of frustrating a relatively frictionless translation. Not the least of those discontinuities is that epics like *The Aeneid*, *Pharsalia*, *Os Lusiads,* and *Paradise Lost* had anything to do with the early modern law of nations whatsoever.

3 'Private' International Law

'What has circumcision to do with "the laws of war and peace?"' – Voltaire[65]

Looking back at Grotius' *De Jure Belli ac Pacis* from the vantage point of the Enlightenment, Voltaire was already perplexed by how different the Renaissance discourse of the law of nations was from his own era's. In the case of Milton, epic poetry can be similarly defamiliarizing, and yet the clearest reminder of how his law of nations differs from modern (public) international law may come less strikingly through the topic of circumcision than through the topic of divorce. Through the 1640s and beyond, Milton advocated the legalization of divorce on grounds combining scripture and the law of nations. His motivations were complex – political, theological, and biographical all at once – but against early modern English law prohibiting divorce in almost all circumstances, Milton tirelessly emphasized companionate marriage above all else.[66] Whereas marriage was consistent with pre-lapsarian natural law (Milton's Adam and Eve wed before the Fall in *Paradise Lost*), divorce, in his schema, had been brought in by the law of nations.[67]

For Milton, what broadly tied divorce to other human institutions of the law of nations were notions like 'restraint' and 'remedy'. Scholars agree that Milton in *Paradise Lost* re-mediates arguments he had earlier made in pamphlets such as

[63] Peters, *supra* note 22, at 279, 277.

[64] *Ibid.*, at 291–292.

[65] Voltaire, *Political Writings* (ed. D. Williams, 1994), at 89.

[66] S. Achinstein, 'Saints or Citizens? Ideas of Marriage in Seventeenth-Century English Republicanism', 25 *The Seventeenth Century* (2010) 240; V. Kahn, *Wayward Contracts : the Crisis of Political Obligation in England, 1640–1674* (2004), at 196–222.

[67] As I emphasize below, the key distinction was between what Milton called the primary law of nature and nations and the secondary law of nature and nations. I use 'nature' to refer to the former, 'nations' to the latter.

Tetrachordon, *Doctrine and Discipline of Divorce*, and *Judgment of Martin Bucer*, pamphlets where Milton engages most fully with Roman jurisprudence.[68] Though parts of Roman law equated the law of nations and the law of nature – in the sense that natural law was what nature taught all animals to do – and parts even of Book 1 Title 2 of the *Institutes* characterized the law of nations as merely the general dictates of reason and thus as roughly synonymous with natural law, Milton instead adopted the account, more compatible with his voluntaristic Arminian theology, in which necessity, longstanding human custom, and the particularities of human experience have greatest weight. In an account in the *Institutes* that derived ultimately from the late classical jurist Ulpian, '[t]he Law of Nations … Is common [only] to the entire human race, for all nations have established for themselves [*constituerunt*] certain regulations exacted by custom and human necessity [*usu exigente et humanis necessitatibus*]. For wars have arisen, and captivity and slavery, which are contrary to natural law, have followed as a result, as, according to Natural Law, all men were originally born free; and from this law nearly all contracts, such as purchase, sale, hire, partnership, deposit, loan, and innumerable others have been derived.'[69]

Milton in *Tetrachordon* was able to accommodate this account to biblical chronology using the Fall and what scripture called 'hardness of heart'. Where the *Institutes* (in this passage at least) used the term 'law of nations' to denote a system of customary practices that diverged from something resembling a state of nature, Milton, following Selden, used the term 'secondary law of nature and of nations' for much the same purpose. Like the law of nations on the whole, divorce was needed in cases of non-companionate marriage 'because the hardness of another's heart might … inflict all things upon an innocent person, whom far other ends brought into a league of love'.[70] Milton went on to refer to the 'restraint of divorce'.[71] In other words, divorce and other institutions of the law of nations were ameliorative and pragmatic – protection from even further harm. Insofar as humanity was capable of mitigating the damage caused by the Fall, the law of nations was the device.

In the account from Selden that Milton largely follows, the secondary law of nations is associated most importantly with time, historicity, and custom, its rights and duties being functions of compact or longstanding practice.[72] Like the provisional

[68] Dzelzainis, '"In These Western Parts of the Empire": Milton and Roman Law', in G. Parry and J. Raymond (eds), *Milton and the Terms of Liberty* (2002), at 57.

[69] *Institutes*, 1.2.1–2.

[70] Milton, *supra* note 3, at 2.662.

[71] *Ibid.*

[72] The secondary law of nations by which Milton justifies divorce bears important relation to what Milton calls in *De Doctrina Christiana ius positivum*, positive right or positive law. In this, Milton's account broadly follows Selden's. According to Selden, law may concern all nations, some nations, or just one nation. That which concerns all nations Selden calls the 'universal law of nations' or the 'common law of mankind'. There are two main sources for this universal law of nations: divine law, whose sources are in scripture or oracles, and the primitive law of nations, or natural law, whose source, says Selden, arises 'out of the nature of the thing itself' and is available to 'right reason'. Obliging some things and permitting others, together, the divine law and the primitive law of nations form the immutable core of the universal law of nations or the common law of mankind. That said, the rights and duties associated with the

stability that re-emerged following the Fall, the secondary law of nations brought a kind of order even as it could never fully repair the breach. The law of nations was itself human art, but what made it 'art [as] / Lawful as eating', to use a term from Shakespeare's *The Winter's Tale*, was its relation to the kind of life it kept at bay and the kind of life it sustained.[73] I quote the following passage at some length because it offers an important sense of what's lost in the translation from law of nations into international law. For Milton,

> partly for this hardnesse of heart, the imperfection and decay of man from original righteousness, it was that God suffer'd not divorce onely, but all that which by Civilians is term'd the *secondary law of nature and of nations*. He suffer'd his owne people to wast and spoyle and slay by warre, to lead captives, to be som maisters, som servants, some to be princes, others to be subjects, hee suffer'd propriety to divide all things by severall possession, trade and commerce, not without usury; in his common wealth some to be undeservedly rich, others to be undeservingly poore. All which till hardnesse of heart came in, was most unjust; whenas prime Nature made us all equall, made us equall coheirs by common right and dominion over all creatures. In the same manner, and for the same cause he suffer'd divorce as well as marriage, our imperfect and degenerat condition of necessity requiring this law among the rest, as a remedy against intolerable wrong and servitude above the patience of man to beare.[74]

For Milton's opponents, divorce was prohibited in most cases other than female adultery because it sundered what God and nature had joined together. For Milton, however, such arguments exhibited striking failures of tragic imagination. Milton ominously invoked 'other violations' even worse than adultery, appealing to his readers to imagine the horrors of non-companionate marriages with their 'ten thousand injuries, and bitter actions of despight too suttle and too unapparent for Law to deal with'.[75] Milton's argument for divorce was an argument from the law of nations dependent upon narrating a radically felt and embodied vulnerability. As with other non-utopian conventions like private property or the taking of slaves in war, divorce was an institution necessitated by humans' now seemingly bottomless capacity to harm. 'Law of nations' in this view names not international law but instead the diverse catalogue of remedies unfolding through time that collectively mitigate the generalized state of human helplessness occasioned by the Fall. *Paradise Lost* exhibits a tragic, at times apocalyptic, vision in which postlapsarian existence is always

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universal law of nations are still to a limited degree temporally contingent, in the sense that specific rights and duties are a function of time and may be changed by God or man. That which is permitted may be altered, and although obligatory laws cannot be altered as permissive laws can, says Selden, sometimes obligatory laws require 'additions' or 'enlargements' to provide more certainty and convenience of observation. There is then an historical component to the universal law of nations/common law of mankind that arises out of additions to obligatory law and alterations to permissive law. Selden's examples of this *ius positvium* include laws having to do with prisoners of war, embassy, hostages, leagues and covenants, proclaiming war, and commerce – practices which together form what Selden calls alternatively the secondary law of nations or the intervenient law of nations. See Selden, *supra* note 56, at 11–16.

[73] William Shakespeare, 'The Winter's Tale' in S. Greenblatt *et al.* (eds), *The Norton Shakespeare* (1997), Act 5, scene 3, lines 110–111.

[74] Milton, *supra* note 3, at 2.661.

[75] *Ibid.*, at 2.273, 2.623.

haunted by tragic alternatives that are even worse than commonly felt human experience. Although scholars have long recognized that Milton inscribed his arguments for divorce into Books 9 and 10 of *Paradise Lost* where he narrates the fall and its immediate aftermath, his introduction of the law of nations into these books has gone under-appreciated because of the conflation of the law of nations with a disembodied, under-historicized conception of the 'international'. At once strange and familiar, Milton's law of nations in *Paradise Lost* is so strange *because* it is so familiar: intimate, vernacular, embodied – even erotic. As Milton turns in Book 9 to narrate the fall – 'chang[ing]' his 'notes to tragic', he emphasizes – he undertakes at the same time to narrate the epochs of the law of nations in the context of his Arminian Eden. Rather like a sentence or indeed an epic poem, Milton's secondary law of nations develops diachronically, through time. Whereas primary natural law was associated with permanence and immutability, the secondary law of nations was associated with history, contingency, and change. It was in this sense that the secondary law of nations was the law of mortal men.

To describe the law of nations in the gendered language of 'men' will not, however, suffice. The secondariness of the law of nations – its dependence upon primary natural law, a secondariness at once logical and temporal – means the law of nations may have less to do with a figure like Adam than with Eve, who, in Milton's words, was 'of man/Extracted' (8.496–497). Better understanding the secondary law of nations in *Paradise Lost* may also require better understanding Eve.[76] As Gilbert and Gubar emphasize in their famous feminist reading of literary history *The Madwoman in the Attic*, it is 'Eve [who] is a secondary and contingent creation'[77]; and yet this need not be as incriminating an indictment as they intend: primacy is hardly valued without qualification in *Paradise Lost*. In fact, part of what makes Satan Satan is his obsession with primacy. He and the other rebellious devils, in Satan's own estimation, were not dependent upon a prior maker but instead 'self-begot, self-raised/By our own quick'ning power', a point Satan makes relying on the fallacy that he cannot remember his making, therefore he was not made (5.860–861). The purported secondariness of his existence sends him into further paroxysms in his debate with God's faithful angel Abdiel: '[t]hat we were formed then say'st thou? And the work/Of *secondary* hands, by task transferred/From Father to Son? Strange point and new!' (5.853–855, emphasis added). There is no need to sugarcoat the misogyny when Adam says to Eve, 'For well I understand in the prime end/Of Nature her th'inferior', but Adam is reprimanded by the visiting angel Raphael for 'Accuse[ing] … Nature'; and Milton has already shown

[76] I am influenced here by Elaine Scarry's reflections on the 'made-up' and the 'made-real'. In a discussion of Scarry, Peters also wonders why 'exposure of the fact that things were once created [should] necessarily mean that their authority should be downgraded? Why should the realization that aesthetic things have something in common with other created things lessen the prestige of the aesthetic generally?': Scarry, 'The Made-Up and the Made-Real', in M. Garber, P. Franklin, and R. Walkowqitz (eds), *Field Work: Sites in Literary and Cultural Studies* (1996); Peters, 'Law, Literature, and the Vanishing Real: On the Future of an Interdisciplinary Illusion', 120 *Publications of the Modern Language Assn* (2005) 442.

[77] S.M. Gilbert and S. Gubar, *The Madwoman in the Attic: the Woman Writer and the Nineteenth-century Literary Imagination* (1979), at 197.

through Satan how secondariness ought in some circumstances to be embraced and valued. Adam's primacy in Milton is, it is true, associated with superior rationality: he explains that upon Eve's creation, 'here passion first I felt,/Commotion strange' (8.530–5310). But Eve's secondariness introduces a new mixture of reason and passion that will ultimately characterize all of fallen human existence. The 'secondary law of nature and nations' by which Milton justifies divorce is no less justification in that context for its secondariness, open though it may be to such critique; instead that secondariness makes it uniquely capable of remedying the commotions of passion, for addressing human life as lived in embodied conditions of vulnerability and mortality.

Insofar as *Paradise Lost* narrates the transition from immortality to mortality – nature to nations – the encounter Milton creates between unfallen Adam and fallen Eve can be seen as an illustrative collision of legal epochs. It is Eve's unambiguously wilful choice to eat the fruit that occasions a dilemma for the unfallen but newly vulnerable Adam through which Milton brings into sharp relief the distinction between the 'prime' law of nature and the 'secondary' law of nations. To which epoch does Adam belong? Milton's Adam captures many of the ambivalences writers often found in the law of nations. Its irrepressible connection with the Fall meant that images associated with the law of nations were almost always simultaneous mementos of perfection and exile, divinity and alienation therefrom. Even the primary law of nations, the part typically associated more with reason than with human art, had such features. Alberico Gentili called the law of nations 'a portion of the divine law which God left with us after our sin'.[78] In *Adamus Exul*, Grotius wrote of God's decision to 'cherish sparks of former light [*lucis antiquae*]' in human minds after the Fall (1905).[79] A few years earlier, he had explained how the 'rational faculty has been darkly beclouded by human vice yet not to such a degree but that rays of the divine light are still clearly visible, manifesting themselves especially in the mutual accord of nations'.[80] Seen in such ways, it was hard to know whether the Janus-faced law of nations should make fallen humanity glad or despondent. It gathered fears as readily as it gathered hopes and dreams.

For unfallen Adam too, the law of nations is a peculiar and potentially suspect locus of authority, hardly worthy of unthinking assent. Nature seems the superior guide. Learning of Eve's transgression, Adam asks, 'How can I live without thee, how forgo/Thy sweet converse and love so dearly joined,/To live again in these wild woods forlorn?' before confiding, 'I feel/The link of nature draw me: flesh of flesh, Bone of my bone thou art, and from thy state/Mine never shall be parted, bliss or woe' (9. 908–910, 9.913–916). Milton is well aware the readers will hear in 'flesh of flesh' the language of Genesis 2:23. But to what extent is Adam, though innocent, operating under an outdated 'primary' legal order as he continues to believe that love for Eve and obedience to God can coincide? Readers who recall Milton's argument that

[78] Gentili, *supra* note 54, at 2.7–2.8.

[79] All references to Grotius' drama are to the following translation, and line numbers are cited parenthetically in the text: Grotius, 'Adamus Exul', in W. Kirkconnell (trans), *The Celestial Cycle; the Theme of Paradise Lost in World Literature with Translations of the Major Analogues* (1952).

[80] H. Grotius, *Commentary on the Law of Prize and Booty* (ed., M.J. Van Ittersum, 2006), at 25.

divorce is a 'remedy for intolerable wrong' can hardly fail to understand Milton's intent when he avers that Adam's fall involves 'submitting to what [only] *seemed* remediless' (9.919, emphasis added). However irrepressible his natural sympathy feels to Adam, however seemingly compelling is Eve's erotic 'female charm', Milton's readers, I think, are meant to learn the voluntarist lesson that the now unfolding secondary law of nations permits another course – namely, to shed the bond of marriage like the dead snakeskin to which it is promptly compared (9.999). Milton, who enshrined in *Paradise Lost* the newly-coined English word 'self-esteem', was never content that legal and political questions be wholly separated from embodied questions of affect and personal virtue: as they are in these passages in book 9, religious, civil, and domestic liberty were almost always intertwined for Milton. Scenes like this one allow Milton to reframe doctrine in narrative and affective terms, wresting a kind of interdisciplinary majority from what Peter Goodrich, following Kafka, might call literature's 'minor jurisprudence'.[81]

It is characteristic of Milton's interest in tying material necessity and domestic concerns to global order that one can find him introducing aspects of the law of nations at a number of different points – there is, for example, a famous passage in which Nimrod dispossesses natural equality with tyranny and slavery which is in some ways a fascinatingly sclerotic repetition of the somewhat more dignified first fall into embodied vulnerability. This is a passage recently quoted as a parable against building global institutions like the tower of Babel.[82] But Milton is in fact unpacking the tradition, derived from Justinian's *Institutes*, in which 'slavery is an institution of the law of nations, against nature, subjecting one man to the dominion of another' (1.3.2). In books 11–12, the archangel Michael gives Adam a proleptic vision of future history, included in which is the story of how natural fraternal equality yields to subjection through Nimrod and the tower of Babel (12.93). The originator of human tyranny and slavery, Nimrod is the first of the 'Violent lords' who 'enthral / … outward freedom' (12.94–96).

While the story is of course familiar, the linguistic resources of poetry allow Milton to tie Nimrod's tyrannous institution of human slavery to the material body, specifically through the word 'aspiration', a word with subtle connotations of finite creaturely life. The vision of Nimrod prompts Adam to cry, 'O execrable son! So to aspire / Above his brethren … /… man over men/[God] made not lord; such title to himself/ Reserving, human left from human free' (12.64–71). 'Aspire' refers at once to the 'spire' of Babel and also to the aspiration of human breath: Milton's Adam observes, 'Wretched man! what food / Will he convey up thither, to sustain / Himself and his rash army; where thin air /Above the clouds will pine his entrails gross, /And famish him of breath, if not of bread?'. To Adam, the human institution of slavery, like the institution of divorce, appears as unnatural as creaturely life without food and air. It is

[81] P. Goodrich, *Law in the Courts of Love: Literature and Other Minor Jurisprudences* (1996); for an account that locates tensions between law and poetry in the Platonic inheritance see Yoshino, 'The City and the Poet', 114 *Yale LJ* (2005) 1835.

[82] Rabkin, *supra* note 8, at 9.

left to Michael to instruct Adam in what appears to be Milton's own, decidedly ambivalent explanation: predicated on the notion that the Fall has introduced the possibility of the naturally free man who 'permits / Within himself unworthy powers to reign/ Over free reason', 'tyranny must be, / Though to the tyrant … no excuse' (12.90–96). Milton's brilliant use of 'aspire' illustrates how poetry offered access to registers more difficult to reach in prose.

I propose to conclude this argument for reading *Paradise Lost* through the history of international law with a final example from Book 10 that combines many of the themes discussed to this point. Milton uses the law of nations to structure the extra-biblical passage following shortly on the heels of Adam's fall in which the Son has been sent both to judge Adam and Eve and to save them. Milton cues the association with the law of nations by now referring to Adam and Eve as 'enemies' of God (10.219). Milton's 18th-century editor Bentley, for one, found the term so striking that he thought it could not have been Milton's own. According to Bentley, 'enemies' was 'certainly of the Editor's Manufacture' on the grounds that 'It's quite superfluous; it divides what's naturally connected; and it changes the Sentiment, from a *Family* under a gracious Master and *Father*, to the Condition of *Enemies*'.[83] Bentley, however, missed the full implication of Milton's term. It was precisely Milton's project to signal changed legal relations. Milton writes of the Son:

> So judged he man, both Judge and Saviour sent,
> And th' instant stroke of death denounced that day
> Removed far off; then pitying how they stood
> Before him naked to the air, that now
> Must suffer change, disdained not to begin
> Thenceforth the form of servant to assume,
> As when he washed his servants' feet, so now
> As father of his family he clad
> Their nakedness with skins of beats, or slain,
> Or as the snake with youthful coat repaid;
> And thought not much to clothe his enemies (10.209–219)

What Bentley and, to my knowledge, other subsequent readers have largely missed is how thoroughly the scene and its language are structured by the laws of war. In a dramatic repurposing of a writer like Vitoria, it is meant to suggest that Adam and Eve have no just title to fallen time before their physical annihilation. Milton, like Grotius and other writers on the law of nations, claimed that *servire*, to serve or to be a slave, derived from *servare*, to spare, save, or protect. Milton exploits this connection in book 3 when God tells the Son, 'for [mankind] I *spare* / Thee from my bosom and right hand, to *save*, / By losing thee awhile, the whole race lost' (3–278–280; emphasis added). Although God's proposed punishment of death in Genesis 3:3 is temporally underspecified, Milton amplifies his notes of slavery and salvation by making his God promise more concretely that '[t]he day thou eatst thereof … /… inevitably though shalt die' (8.329–330). As the promised 'instant stroke of death' is nevertheless postponed into

[83] R. Bentley (ed.), *Paradise Lost* (1732), at 312.

the future ('Removed far off'), Adam and Eve become obliged like battlefield enemies spared the just punishment of death.

Terms like 'servant' and 'suffer' from Milton's discussion of the law of nations cluster once again in this passage, as we might expect from a passage in which Milton narrates the transition from 'prime Nature'. It is thus that Adam and Eve become servants of their dominus or Lord. Having read Grotius' *Adamus Exul*, Milton may in fact here be borrowing from him: Grotius' God too 'preferr'd to show … clemency, and not / The rigours of my law' (*Adamus Exul*, lines 1960–1961). The point in both cases is that if God then might justly have ended human life in a stroke, the life-giving Son by contrast becomes the just captor of their newly temporally-bound lives by postponing their inevitable death. Much as Grotius' God tells Adam and Eve, 'I could have overwhelm'd / The pair of you with sudden gunnery of death', so does Milton's God, through the Son, let 'pity' reign (*Adamus Exul*, lines 1958–1959). In a few lines, Milton will further illuminate exactly how the Son differs from Sin and Death, who, as emissaries of Satan, are formally analogous to the Son, but essentially cruel. They, Milton writes, enthrall – take captive or enslave – merely to 'kill' (10.402). Milton's very next word, 'then' (10.211), indicates how the Son's mercy is the very condition of possibility for postlapsarian time. And just as Adam and Eve owe their time to the Son, so too do they owe him their bodies: when 'they stood / Before him naked to the air', the Son, 'pitying how they stood / Before him', 'clad their nakedness with skins of beasts' (10.211–212, 10.216–217).

In skins of beasts, finally, we can see a material emblem for the Janus-faced character of Milton's law of nations.[84] Like skins of beasts, the law of nations marked a series of borders. On the one hand, skins of beasts mitigated the ardours of embodied, mortal life. If for St Paul, writing to the Ephesians, 'The spirit that now worketh in the children of disobedience is the prince of the power of the air' (2:2), the colouring Milton gave to this passage was that air with the Fall had become a threat to newly vulnerable bodies for which skins of beasts were a remedy made possible by God. On the other hand, skins of beasts registered the coming in of a world of destruction, the death of animals by which the lives of humans might be extended. If Milton, as Mary Nyquist suggests, 'activates "nakedness" in the sense of "unarmed"', skins of beasts are arms or armour, 'devices' for a fallen world (9.1091).[85] In *Adamus Exul*, Grotius' God tells the fallen Adam, 'Often, with [Christ] their Head, the just, with arm'ed hand / Shall bring back *spolia opima*, routing thee' (1920–1921). *Spolia opima* were the arms and armour stripped from a defeated enemy in war – war spoils – but *spolia*, as Milton and Grotius both knew, was Latin for skins of beasts.

There are theological subtleties here, still worthy of disentangling, but this – obviously – is a law of nations we would struggle to find in standard histories of international law. I suggested at the beginning that a full understanding of Milton's law of nations required a paradoxical estranging of the law of nations and a domestication

[84] The point shares similarities with that made in M. Koskenniemi, *From Apology to Utopia: The Structure of International Legal Argument* (2005).

[85] Nyquist, 'Contemporary Ancestors of De Bry, Hobbes, and Milton', 77 *U Toronto Q* (2008) 837.

of it and that the 18th century term 'international' re-emerges counter-intuitively through *Paradise Lost* as a term with which it becomes possible to retract from the profound risks of earthly cohabitation. If 'international' is abstract, mystical, between and thus nowhere, skins of beasts by contrast are material, quotidian – as familiar as the shame and embodied vulnerability they seek to remedy. Shortly before the conclusion of *Paradise Lost*, Milton writes powerfully of Adam and Eve leaving the garden, 'Some natural tears they dropped, but wiped them soon. / The world was all before them' (12.645–646). Milton in such passages points towards the embodied experience of human passions and vulnerability that is the essence of the law of nations in Milton's Renaissance Christian context. David Quint rightly observes that 'Milton reverses epic tradition by giving the private world of Eden prominence over a public arena of military-political exploits – a reversal so remarkable that it almost seems to create a new genre'.[86] This is a genre, I might suggest, capable of giving us a more nuanced history of international law.

For Milton, what made conventions like divorce, property, captivity, and laws of war part of the law of nations was that they formed part of the broad set of non-utopian remedies that mitigated the generalized state of human helplessness occasioned by the Fall. Ultimately, *Paradise Lost* helps us see more clearly how the law of nations was – and continues to be – vulnerable to critiques from two sides: on the one hand normalizing felt injustices, on the other hand wanting too much. If some still see the law of nations as impairing the godly endeavour to walk once again with God in the garden, giving undue quarter to violence and destruction, there are others for whom the Fall was a decisive break. Showing sparks of the former light, the law of nations would become for some writers *too* connected to an unattainable innocence, its danger flowing from the perilous conjunction of its attractiveness and unattainability. God, they point out, had set angels barring the gates of Eden, 'dreadful faces thronged and fiery arms' (12.644). For such writers, there was and is no path back to the garden. Milton's two-word title captures both of these perspectives: while the emphasis for some may be on *Paradise*, for others it may be on *Lost*. As we think once again about the epoch to which Milton belongs, it may be most useful to think about its being an epoch where one could explore and unfold such complexities, all in the medium of an epic poem.

[86] Quint, *supra* note 22, at 283.